

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1218-PST-E TCEQ ID: RN101687986 CASE NO.: 36269**  
**RESPONDENT NAME: ARMANDO CANTU DBA E-Z MART 5**

Page 1 of 3

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input checked="" type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 1500 West Business Highway 83, Mission, Hildago County

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired June 15, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Peipey Tang, Litigation Division, MC 175, (512) 239-0654

Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Ms. Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789

**TCEQ Regional Contact:** Mr. Jaime Garza, Harlingen Regional Office, MC R-15, (956) 430-6030

**Respondent:** Mr. Armando Cantu, Owner, E-Z Mart 5, 1500 West Business Highway 83, Mission, Texas 78572

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> April 18, 2008 and April 23, 2008</p> <p><b>Date of NOE Relating to this Case:</b> June 16, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed December 2, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on December 6, 2008. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference. On February 3, 2009, the Notice of Intent ("NOI") to shutdown the USTs at the Facility was mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received the NOI on February 5, 2009.</p> <p><b>Current Compliance Status:</b> Not yet in compliance. The Respondent's delivery certificate expires in October 2009.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to monitor underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</li> <li>Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</li> </ol>	<p><b>Initial Calculated Penalty:</b> \$5,000</p> <p><b>Total Assessed:</b> \$5,000</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$5,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty, but will be required to do so under the terms of this proposed Order.</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent's UST delivery certificate is revoked immediately upon the effective date of the Order. The Respondent may submit an application for a new delivery certificate and resume service of the USTs only after the Respondent has complied with the requirements set forth in the Order.</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately take the following steps to shut down operations of all USTs at the Facility: <ol style="list-style-type: none"> <li>Cease dispensing fuel from the USTs;</li> <li>Cease receiving deliveries of regulated substances into the USTs;</li> <li>Padlock the dispensers;</li> <li>Empty the USTs of all regulated substances; and</li> <li>Temporarily remove the USTs from service.</li> </ol> </li> <li>Within 10 days, surrender his UST delivery certificate to the TCEQ</li> <li>Within 15 days, submit a detailed written report documenting the steps taken to comply with Ordering Provision Nos. 1.a. through 2.</li> <li>If the Respondent elects to permanently remove from service any USTs at the Facility: <ol style="list-style-type: none"> <li>Immediately and permanently remove the UST system and within 15 days; and</li> <li>Within 15 days, submit a written report documenting compliance with Ordering Provision No. 4.a.</li> </ol> </li> <li>Prior to receiving deliveries of gasoline and resuming sales of gasoline: <ol style="list-style-type: none"> <li>Install and implement a release detection method for all USTs at the Facility and begin conducting volume measurements and reconciliation for inventory control records;</li> <li>Begin conducting effective manual or automatic inventory control procedures for all USTs; and</li> <li>Obtain a new delivery certificate from the TCEQ.</li> </ol> </li> <li>Within 10 days after resuming service, submit written certification to demonstrate compliance with Ordering Provision No. 5.</li> <li>Upon obtaining a new delivery certificate, post the delivery certificate in a location where the document is clearly visible at all times.</li> </ol>

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>3. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount remaining in the tank each operating day [30 TEX. ADMIN CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>4. Failed to conduct effective manual or automatic inventory control procedures for an UST involved in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</p>		



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

TCEQ

DATES	Assigned	30-Jun-2008	Screening	21-Jul-2008	EPA Due	
	PCW	20-Oct-2008				

## RESPONDENT/FACILITY INFORMATION

Respondent	Armando Cantu dba E-Z Mart 5		
Reg. Ent. Ref. No.	RN101687986		
Facility/Site Region	15-Harlingen	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	36269	No. of Violations	2
Docket No.	2008-1218-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Elvia Maske
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$5,000**

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **0.0% Enhancement** **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment due to compliance history.

**Culpability** **No** **0.0% Enhancement** **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** **0.0% Reduction** **Subtotal 5** **\$0**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

**0.0% Enhancement\*** **Subtotal 6** **\$0**

Total EB Amounts **\$76**  
 Approx. Cost of Compliance **\$2,000**  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$5,000**

## OTHER FACTORS AS JUSTICE MAY REQUIRE

**0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$5,000**

## STATUTORY LIMIT ADJUSTMENT

**Final Assessed Penalty** **\$5,000**

## DEFERRAL

**0.0%** **Reduction** **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

## PAYABLE PENALTY

**\$5,000**

Screening Date 21-Jul-2008

Docket No. 2008-1218-PST-E

PCW

Respondent Armando Cantu dba E-Z Mart 5

Policy Revision 2 (September 2002)

Case ID No. 36269

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101687986

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

<b>Screening Date</b> 21-Jul-2008 <b>Respondent</b> Armando Cantu dba E-Z Mart 5 <b>Case ID No.</b> 36269 <b>Reg. Ent. Reference No.</b> RN101687986 <b>Media [Statute]</b> Petroleum Storage Tank <b>Enf. Coordinator</b> Elvia Maske <b>Violation Number</b> <input type="text" value="1"/>	<b>Docket No.</b> 2008-1218-PST-E <div style="text-align: right;"><b>PCW</b></div> <div style="text-align: right; font-size: small;"> Policy Revision 2 (September 2002)  PCW Revision April 29, 2008 </div>																		
<b>Rule Cite(s)</b> 30 Tex. Admin. Code § 334.50(b)(1)(A), 334.50(d)(1)(B)(ii), 334.50(d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1)																			
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<b>Base Penalty</b> <input style="width: 100px;" type="text" value="\$10,000"/>																			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																			
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;"><b>Release</b></td> <td style="width: 10%; text-align: center;"><b>Major</b></td> <td style="width: 10%; text-align: center;"><b>Moderate</b></td> <td style="width: 10%; text-align: center;"><b>Minor</b></td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> <tr> <td></td> <td>Potential</td> <td><input type="text" value="x"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> </table> <div style="text-align: right; margin-top: 5px;"> <b>Percent</b> <input style="width: 50px;" type="text" value="25%"/> </div>		<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>			Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>			Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
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	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>															
Matrix Notes	<div style="border: 1px solid black; padding: 5px; min-height: 40px;"> Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation. </div>																		
<b>Adjustment</b> <input style="width: 100px;" type="text" value="\$7,500"/>																			
<input style="width: 100px;" type="text" value="\$2,500"/>																			
<b>Violation Events</b>																			
<div style="display: flex; justify-content: space-between;"> <div> <b>Number of Violation Events</b> <input style="width: 50px;" type="text" value="1"/> </div> <div> <input style="width: 50px;" type="text" value="89"/> <b>Number of violation days</b> </div> </div> <div style="margin-top: 10px;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"></td> <td style="width: 10%; text-align: center;"><b>daily</b></td> <td style="width: 10%;"></td> </tr> <tr> <td></td> <td>monthly</td> <td><input type="text"/></td> </tr> <tr> <td></td> <td>quarterly</td> <td><input type="text" value="x"/></td> </tr> <tr> <td></td> <td>semiannual</td> <td><input type="text"/></td> </tr> <tr> <td></td> <td>annual</td> <td><input type="text"/></td> </tr> <tr> <td></td> <td>single event</td> <td><input type="text"/></td> </tr> </table> <div style="text-align: right; margin-top: 10px;"> <b>Violation Base Penalty</b> <input style="width: 100px;" type="text" value="\$2,500"/> </div> </div>			<b>daily</b>			monthly	<input type="text"/>		quarterly	<input type="text" value="x"/>		semiannual	<input type="text"/>		annual	<input type="text"/>		single event	<input type="text"/>
	<b>daily</b>																		
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	semiannual	<input type="text"/>																	
	annual	<input type="text"/>																	
	single event	<input type="text"/>																	
<div style="border: 1px solid black; padding: 5px; min-height: 30px;"> One quarterly event is recommended based on documentation of the violation during the April 23, 2008 investigation date to the July 21, 2008 screening date. </div>																			
<b>Economic Benefit (EB) for this violation</b>																			
<div style="display: flex; justify-content: space-between;"> <div> <b>Estimated EB Amount</b> <input style="width: 100px;" type="text" value="\$58"/> </div> <div> <b>Statutory Limit Test</b> </div> </div>																			
<b>Violation Final Penalty Total</b> <input style="width: 100px;" type="text" value="\$2,500"/>																			
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input style="width: 100px;" type="text" value="\$2,500"/>																			

**Economic Benefit Worksheet****Respondent** Armando Cantu dba E-Z Mart 5**Case ID No.** 36269**Reg. Ent. Reference No.** RN101687986**Media** Petroleum Storage Tank**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	23-Apr-2008	1-Feb-2009	0.78	\$58	n/a	\$58

**Notes for DELAYED costs**

Estimated cost of monitoring all USTs for releases to include volume measurement and reconciliation of inventory control records. Date Required is the investigation date. Final Date is the expected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$1,500

**TOTAL**

\$58

Screening Date 21-Jul-2008

Docket No. 2008-1218-PST-E

PCW

Respondent Armando Cantu dba E-Z Mart 5

Policy Revision 2 (September 2002)

Case ID No. 36269

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101687986

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.48(c)

Violation Description

Failed to conduct effective manual or automatic inventory control procedures for a UST involved in the retail sale of petroleum substances used as a motor fuel.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

89 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the April 23, 2008 investigation date to the July 21, 2008 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$17

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500



**Economic Benefit Worksheet**

Respondent: Armando Cantu dba E-Z Mart 5

Case ID No. 36269

Reg. Ent. Reference No. RN101687986

Media: Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	23-Apr-2008	1-Jan-2009	0.69	\$17	n/a	\$17
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct effective inventory control procedures. Date Required is the investigation date. Final Date is the expected date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$17

# Compliance History

Customer/Respondent/Owner-Operator:	CN603374059	CANTU, ARMANDO	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101687986	E-Z MART 5	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	38419	
Location:	1500 W HWY 83, MISSION, TX, 78572	Rating Date: 09/01/2007	Repeat Violation: NO	
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	July 26, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 25, 2003 to July 25, 2008			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Elvia Maske Phone: (512) 239-0789

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 06/18/2008 (653845)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF  
AN ENFORCEMENT ACTION  
CONCERNING  
ARMANDO CANTU DBA  
E-Z MART 5;  
RN101687986

§  
§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

## DEFAULT AND SHUTDOWN ORDER DOCKET NO. 2008-1218-PST-E

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, Armando Cantu dba E-Z Mart 5 ("Mr. Cantu"), to shutdown or remove from service the Underground Storage Tanks ("USTs") at the E-Z Mart 5 facility, located at 1500 West Business Highway 83, Mission, Hidalgo County, Texas.

The Commission makes the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. Mr. Cantu owns and operates a convenience store with retail sales of gasoline, located at 1500 West Business Highway 83, Mission, Hidalgo County, Texas.
2. The USTs at the Facility contain regulated substances as defined in the Commission's rules. The USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. On April 18, 2008 and April 23, 2008, an investigator from the TCEQ Harlingen Regional Office documented that Mr. Cantu:
  - a. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

- b. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.
  - c. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount remaining in the tank each operating day.
  - d. Failed to conduct effective manual or automatic inventory control procedures for an UST involved in the retail sale of petroleum substances used as a motor fuel.
- 4. By letter dated June 16, 2008, the TCEQ Harlingen Regional Office provided Mr. Cantu with notice of the violations and the TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, and corrosion protection regulations if the violations were not corrected.
  - 5. Mr. Cantu received notice of the violations on or about June 21, 2008.
  - 6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Armando Cantu dba E-Z Mart 5" (the "EDPRP") in the TCEQ Chief Clerk's office on December 2, 2008.
  - 7. By letter dated December 2, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Cantu with notice of the EDPRP. According to the return receipt "green card," Mr. Cantu received notice of the EDPRP on December 6, 2008 as evidenced by the signature on the card.
  - 8. More than 20 days have elapsed since Mr. Cantu received notice of the EDPRP, provided by the Executive Director. Mr. Cantu failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
  - 9. By letter dated February 3, 2009, TCEQ provided Mr. Cantu with notice of TCEQ's intent to order the USTs at the Facility shut down and removed from service if Mr. Cantu failed to correct the release detection violations within 30 days after Mr. Cantu's receipt of the notice.
  - 10. As of the date of entry of this Order, Mr. Cantu has not corrected the violations noted during the April 18, 2008 and April 23, 2008 investigation.
  - 11. The USTs at the Facility do not have release detection as required by 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), 334.50(d)(1)(B)(ii), 334.50(d)(1)(B)(iii)(I), and TEX. WATER CODE § 26.3475(c)(1) and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Cantu's USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact Number 3.a., Mr. Cantu violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).
3. As evidenced by Finding of Fact Number 3.b., Mr. Cantu violated 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1) by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.
4. As evidenced by Finding of Fact Number 3.c., Mr. Cantu violated 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1) by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount remaining in the tank each operating day.
5. As evidenced by Finding of Fact Number 3.d., Mr. Cantu violated 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for an UST involved in the retail sale of petroleum substances used as a motor fuel.
6. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Mr. Cantu with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 8, Mr. Cantu has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Cantu and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Cantu for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of five thousand dollars (\$5,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

10. As evidenced by Finding of Fact Nos. 3, 4, 5, 9 and 10, Mr. Cantu failed to correct documented violations of Commission requirements within 30 days after Mr. Cantu received notice of the violations and notice of the Executive Director's intent to shut down the Facility.
11. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overfill protection for tanks, corrosion protection for tanks and piping, and/or acceptable financial assurance.
12. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
13. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. Cantu's UST delivery certificate if the Commission finds that good cause exists.
14. Good cause for revocation of Mr. Cantu UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 10 and Conclusions of Law Nos. 2, 3, 4, 5, 6, 7 and 10.
15. As evidenced by Finding of Fact No. 11, current conditions at the Facility constitute an imminent peril to public health, safety and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

#### ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Mr. Cantu shall take the following steps to shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Padlock the dispensers;
  - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and

- e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Mr. Cantu's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. Cantu may submit an application for a new delivery certificate only after Mr. Cantu has complied with the requirements set forth in Ordering Provision Nos. 1, 3, 4, 6, 7, 8, and 9.
3. Within 10 days after the effective date of this Order, Mr. Cantu shall send his UST delivery certificate to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

4. Within 15 days after the effective date of this Order, Mr. Cantu shall submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 3. Mr. Cantu shall submit the report to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

Jaime Garza, Waste Section Manager  
Harlingen Regional Office  
Texas Commission on Environmental Quality  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

5. If Mr. Cantu elects to permanently remove from service any USTs at the Facility, Mr. Cantu shall immediately and permanently remove the UST system in accordance with 30 TEX. ADMIN. CODE § 334.55. If Mr. Cantu permanently removes any portion of the UST system from service, Mr. Cantu shall, within 15 days after the effective date of this order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. Mr. Cantu shall submit the written report to:

Petroleum Storage Tank Registration Team, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

6. Mr. Cantu is assessed an administrative penalty in the amount of five thousand dollars (\$5,000.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Mr. Cantu's compliance with all the terms and conditions set forth in this Order completely resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Armando Cantu dba E-Z Mart 5; Docket No. 2008-1218-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

7. Mr. Cantu's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as Mr. Cantu demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Finding of Fact Nos. 3.a. through 3.c. and Conclusion of Law Nos. 2 through 4 as listed herein.
8. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Mr. Cantu shall:
  - a. Install and implement a release detection method for all USTs at the Facility and begin conducting volume measurement and reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50;
  - b. Begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48; and
  - c. Obtain a new delivery certificate from the TCEQ.
9. Within 10 days of resuming retail sales of gasoline, Mr. Cantu shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 8. The written certification shall be notarized by a State of Texas Notary



Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

Jaime Garza, Waste Section Manager  
Harlingen Regional Office  
Texas Commission on Environmental Quality  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

10. Upon obtaining a new delivery certificate, Mr. Cantu shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. All relief not expressly granted in this Order is denied.
12. The provisions of this Order shall apply to and be binding upon Mr. Cantu, and Mr. Cantu is ordered to give notice of this Order to personnel who maintain day-to-day control of the USTs at the Facility.
13. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Mr. Cantu if the Executive Director determines that Mr. Cantu is noncompliant with or in violation of any of the terms and conditions set forth in this Order.
14. This Order shall terminate five years from its effective date or when Mr. Cantu demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.

15. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

# AFFIDAVIT OF PEIPEY TANG

STATE OF TEXAS           §  
                                  §  
COUNTY OF TRAVIS      §

"My name is Peipey Tang. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Armando Cantu dba E-Z Mart 5" (the "EDPRP") was filed with the Office of the Chief Clerk on December 2, 2008.

The EDPRP was mailed to Mr. Cruz at its last known address on December 2, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Cantu received notice of the EDPRP on December 6, 2008, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Cantu received notice of the EDPRP. Mr. Cantu failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

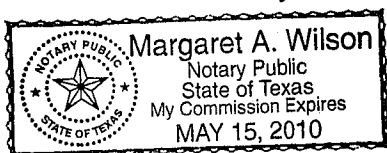
By letter dated February 3, 2009, sent via first class mail and certified mail, return receipt requested article no. 9171 0821 3339 3456 0438 93, I provided Mr. Cantu with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of Mr. Cantu's receipt of the letter. According to the return receipt "green card," Mr. Cantu received the NOI on February 5, 2009.

As of the date of this affidavit, I am not aware of any evidence that indicates that Mr. Cantu has corrected the violations noted during the April 19, 2008 and April 23, 2008 investigation."

Peipey Tang  
Peipey Tang, Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Peipey Tang, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 19<sup>th</sup> day of MAY, A.D., 2009.



Margaret Wilson  
Notary Signature